UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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JAIME HUGHES, MARY CORONADO, AUDREY MILLS, VIRGINIA CARDOZA, KAREN DELUCCHI, JOLENE GIBSON, BARBARA HEDRICK, SUZANNE HENNING, WILL JOHNSON, LINDA MAGER, MARIA MACIAS, CARL MORROW, CANDICE PRICE, VIRGINIA RUIZ, CARMEN SIMMONS, TREASA TREDWELL, MARINA TORRES, SHEILA WALL, LORIE WEISS and KATHI LYNN CORONADO,

Plaintiffs,

v.

CITY OF STOCKTON and DOES 1 through 100, in their individual capacities,

Defendants.

NO. CIV. S 03-0166 MCE DAD

MEMORANDUM AND ORDER

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Plaintiffs, who are employed by Defendant City of Stockton ("City") as fire department dispatchers, have brought the present action for unpaid overtime compensation pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA"). Both

Plaintiffs and the City now move for summary judgment with respect to whether any actionable FLSA violation has been established, and whether Plaintiffs are entitled to recover liquidated damages, or damages over a three year limitation period, in accordance with 29 U.S.C. §§ 216(b), 260, and 255(a). Alternatively, both Plaintiffs and the City also seek partial summary judgment as to the above issues on an individual basis.

For the reasons set forth below, summary judgment is denied as to both motions. Partial summary judgment is also denied, except that Plaintiffs have not shown that the City acted willfully and intentionally in violating the FLSA so as to entitle Plaintiffs to recover under an extended three year statute of limitations. Consequently the City is entitled to partial summary judgment on that issue.

BACKGROUND

Plaintiffs are twenty fire department dispatchers, formally known as Fire Telecommunicators. Seventeen of these individuals are in non-supervisory positions. All are non-exempt employees who work a "Kelly" schedule consisting of staggered 24-hour shifts.

Prior to 1986, both police and fire dispatchers in Stockton worked out of the same facility on 12-hour shifts. After 1986, however, when the fire dispatchers moved to the City's central downtown fire station, they have worked 24-hour shifts, except for a brief experiment in late 2000 and early 2001 when four fire dispatchers were placed on twelve hour shifts for a few months.

At present all fire dispatchers work on a "Kelly" schedule whereas the police dispatchers work 10-hour shifts.

The "Kelly" schedule entails shifts alternating with days off in such a way that dispatchers work either 48 hour or 72 hour weeks. This work pattern, which the City claims is completely predictable over a nine-day cycle, allegedly produces annual hours totaling 2912. When this figure is divided by the number of weeks in a year, the City computes an average weekly number of hours, for each fire dispatcher working the "Kelly" schedule, at 56.

Prior to 2000, fire dispatchers were paid overtime on all hours exceeding 40 in a given week which meant that their checks varied depending on whether the pay period included a "fat" week with three of the 24-hour shifts, or instead encompassed just two shifts. That variable rate of compensation changed after 2000.

Between July and August 2000, labor negotiations ensued between the City and the two unions representing the dispatchers, the Stockton City Employees Association ("SCEA", for the rank and file dispatchers), and the Stockton B & C Management Employees Association ("SBCMEA", for the supervisorial dispatchers). At that time the City anticipated that both fire and police dispatchers would eventually again be housed out of the same physical location, and it wanted to work towards integrating their functions. Several issues were addressed during those negotiations, including Police Telecommunicators' complaints that they were paid less than their fire counterparts and the need for potential flexibility in reassigning some of the fire dispatchers to 10-12 hour shifts instead of the longer 24-hour shift.

George Bist served as the City's chief negotiator. Wally Storm attended the meetings as the bargaining representative of the SCEA, and at least two of the named plaintiffs to this lawsuit (Lori Weiss and Marina Torres) also participated. May Prosser-Strong was the SBCMEA representative.

The City contends that these negotiations ultimately produced an agreement as to the annual compensation then earned by the fire dispatchers on their 24-hour shifts, including regularly paid overtime. According to the City, the regularly scheduled overtime (on a 56 hour a week average) was folded into the fire dispatchers previous base wage such that the fire dispatchers' new salary included both 40 hours of straight time as well as overtime for all regularly scheduled hours in excess of 40. The City further contends that, as a result of the alleged agreement, a previous three-hour sleep time deduction for each 24-hour shift was eliminated.

Additionally, in order to ensure that any fire dispatchers moved to 10-12 hour shifts were not financially penalized, they were to receive the same base salary as their 24-hour counterparts whose salary also included the regularly scheduled overtime specified above. Police dispatchers working 40-hour weeks also received the same compensation package. In essence, this constituted a fairly sizable pay increase for those police dispatchers, with fire telecommunicators working 24-hour shifts continuing to receive the same compensation for a longer work week.

While the pay increase to the police dispatchers was memorialized by a City Resolution, the alleged agreement reached

with the fire dispatchers concerning the terms and conditions of their compensation was not similarly formalized. No resolution, Memorandum of Understanding ("MOU") or side letter with the fire dispatchers was reached with respect to what Plaintiffs characterize as a lower hourly rate paid to them, as opposed to police dispatchers working fewer hours. (See Storm Deposition, 45:16-47:10). Plaintiffs claim this runs counter to the implicit terms of the City Resolution authorizing increased police dispatcher pay in order to eliminate salary "disparity" for "the same class of work." (Plaintiffs' Undisputed Fact No. 67; See Stockton City Counsel Resolution 00-0559, Exhibit "C" to the Declaration of George Bist). Plaintiffs further assert that this also is inconsistent with the City's regular practice of reducing agreements with labor organizations to writing, and presenting an appropriate resolution to the City Council for approval (as occurred with respect to the police dispatcher salary increase). (Plaintiffs' Additional Undisputed Fact Nos. 2-4). Finally, Plaintiffs point out that in the absence of any written agreement or letter of understanding, the purported salary arrangement with the fire dispatchers was never put to a vote by the concerned employees. (Id. at 5-6).

In arguing that the City's arrangement for compensating them for overtime violates the FLSA, Plaintiffs contend that no true hourly rate apart from an annualized salary was ever established. Plaintiffs further contend that the City's salary schedules, personnel action forms, and pay stubs do not reflect that the base pay derived from that annual salary was intended to provide compensation for more than 40 hours per week. (See Plaintiffs'

Undisputed Fact No. 33). Plaintiffs' pay stubs, for example, do not reflect any overtime whatsoever unless Plaintiffs work in excess of their regularly scheduled shifts, which total either 48 or 72 hours in any given week. (Id. at 81-82). Additionally, Plaintiffs take issue with the City's claim that sleep time is no longer deducted from their shift compensation.

The City, on the other hand, asserts that while the mode of paying fire dispatchers changed, their actual salary remained unaltered and continued to include compensation for all overtime worked. According to the City, all of the individuals involved in the negotiations agree that the fire dispatchers' new base salary included both straight pay and all regularly scheduled overtime.[1] This contention is further supported by the fact that the base salary for a Fire Telecommunicator I increased from $2410/month in January of 2000 to $3501/month by January of 2001. Because the fire dispatchers did not otherwise receive a raise during this time period, the City asserts that this new figure necessarily includes overtime.

Through this lawsuit, Plaintiffs claim that because their paychecks do not specifically break-out the regularly scheduled overtime, the basic pay including that overtime has to be deemed as only compensating them for the first 40 hours of work. They argue that the City cannot average overtime earnings, as they have done, under the FLSA, and assert they understood their base salary to only compensate for a 40-hour work week. (See Plaintiffs' Undisputed Fact No. 24). Plaintiffs contend that no

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[1]See Storm Deposition, 40:8-19; Prosser-Strong Declaration, ¶ 4, Exhibit "B", Bist Declaration, ¶¶ 8-9).

enforceable agreement was ever reached as to the new salary arrangement, despite the fact that their bargaining representatives as well as the involved City officials appear to indicate otherwise. Alternatively, Plaintiffs contend that even if an agreement was reached it is unenforceable as violative of the FLSA.

Both Plaintiffs and the City now move for summary judgment, or in the alternative for summary adjudication as to individual issues, on grounds that their respective positions entitle them to that relief.

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

Rule 56 also allows a court to grant summary adjudication on part of a claim or defense. *See* Fed. R. Civ. P. 56(a) ("A party seeking to recover upon a claim ... may ... move ... for a summary judgment in the party's favor upon all or any part thereof."); *see also* Allstate Ins. Co. v. Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter

Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

The standard that applies to a motion for summary adjudication is the same as that which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a), 56(c); Mora v. ChemTronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Once the moving party meets the requirements of Rule 56 by showing that there is an absence of evidence to support the non-moving party's case, the burden shifts to the party resisting the motion, who "must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Genuine factual issues must exist that "can be resolved only by a finder of fact, because they may reasonably be resolved in favor of either party." Id. At 250. In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. *See* T.W. Elec. V. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-631 (9th Cir. 1987), citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

ANALYSIS

The facts presented by this case are extraordinarily complicated, must necessarily be viewed in an historical context over a period of years, involve detailed calculation and comparison, and hinge on conflicting evidence and/or testimony

offered with respect to what was or was not agreed by the parties. Even at first glance, such circumstances would not appear amenable to disposition on summary judgment.

With respect to the fundamental issue of whether FLSA violations occurred with respect to the manner in which the fire dispatchers were compensated,[2] however, the initial question that must be addressed is whether the City entered into any enforceable agreement in that regard during its 2000 labor negotiations. The City takes the position that an agreement did occur that properly encompassed all regularly scheduled overtime, and consequently passes muster under the FLSA. Plaintiffs, on the other hand, maintain that the lack of any enforceable agreement precludes the City from arguing that the annualized fire dispatcher salary covers anything beyond the first 40 hours in any given work week, and argue that an FLSA violation occurred on that basis. Consequently the purported 2000 agreement, or lack thereof, is central to the FLSA position advanced by both parties.

There are numerous triable issues of fact with respect to any salary agreement that preclude summary judgment in favor of either side in this case. While there is testimony from both the union representatives and City negotiators that a deal was indeed made, it may be equally significant that the alleged agreement was not reduced to writing or approved by the City Council. Another factor which may militate against any agreement is

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[2]Plaintiffs allege a violation of 29 U.S.C. § 207, which required that non-exempt employees be paid at a rate of 1.5 times their regular pay for all hours worked over 40 in a seven day period.

Plaintiffs' argument that overtime compensation is not reflected in the salary schedules, personnel action forms, or even Plaintiffs' payroll stubs. On the other hand, the fact that Plaintiffs essentially made the same amount of money both before the negotiations took place (when overtime was being computed into their paychecks on a week-to-week basis) and afterwards bodes well for the City's argument that the additional salary amount necessarily represented payment for overtime in the absence of any other salary increase. The bottom line, however, is that weighing these competing considerations is well beyond the province of summary judgment.[3]

In addition, even if one goes beyond the enforceability of the alleged 2000 agreement itself, Plaintiffs also contend that the City violates the FLSA by automatically deducting three hours of sleep time from every 24-hour shift. They allege that 29 C.F.R. § 785.22 requires five hours of sleep before any deduction for a sleeping period may be taken, and that the City's current failure to account for sleeping time precludes any salary offset from being taken. The City argues that no deduction whatsoever is taken for sleep time, despite the fact that the salary proposal for telecommunicator compensation (Exhibit 9 to the Parrott Deposition, attached as Exhibit "E" to the Declaration of Stephanie A. Miller) appears to reflect such deductions. Again, disparities of this nature raise triable issues of fact that

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[3]Given the uncertainties raised with respect to the 2000 agreement itself, the Court declines to consider at this time whether or not the agreement would have withstood scrutiny under the FLSA, if one assumes that the alleged agreement was indeed finalized.

cannot be resolved on summary judgment.

Aside from the issue of FLSA violations themselves, both sides also request summary adjudication on issues pertaining to the recoverability of damages under FLSA. The first issue in that regard concerns the statute of limitations pursuant to which Plaintiffs may recover unpaid overtime compensation. Generally, that limitations period is two years, except that actions arising from a "willful" violation of the FLSA extends the statute of limitations to three years. See 29 U.S.C. § 255(a). Plaintiffs have the burden of showing the requisite willfulness by demonstrating that the City knew or showed reckless disregard for whether its conduct was prohibited by the FLSA. *See* McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988). Willfulness, under this standard, cannot be found on the basis of mere negligence. Id. at 135.

Plaintiffs have not met their burden in proving that the City acted willfully in any potential FLSA violation encompassed by this case. Instead, the evidence points to an attempt by the City to negotiate fire dispatcher compensation issues with union bargaining representatives. Even if ultimately found misguided, any flaws in the agreement reached, or even the lack of a binding agreement altogether, do not raise to the level of willfulness required to trigger the longer three-year statute of limitations.

The second, and to a certain extent, related issue pertains to the availability of liquidated damages in this case. Under the FLSA, an employer is liable for all unpaid overtime compensation and an additional equal amount as liquidated damages (29 U.S.C. § 216(a) unless the employer had a good faith belief

that it was in compliance with the FLSA and had reasonable grounds for that belief. 29 U.S.C. § 260; Bratt v. County of Los Angeles, 912 F.2d 1066, 1071 (9th Cir. 1990), *cert. denied*, 498 U.S. 806 (1991). Absent such a showing liquidated damages are mandatory. Id.

The statutory requirements of good faith belief in FLSA compliance, and reasonable grounds for that belief, have both subjective and objective components. To satisfy the subjective "good faith" component, the City must show that it had an honest intention of ascertaining what the FLSA required and that it acted in accordance with that contention. Id. at 1072. The question of "honest intention" is an essentially factual inquiry. Id. Further, the additional requirement that the City had reasonable grounds for believing that its conduct complies with the FLSA imposes an objective standard. Id. If the City cannot come forward with "plain and substantial" evidence to satisfy both the subjective and objective components of the liquidated damages test, the district court is without discretion to deny such damages. Williams v. Tri-County Growers, Inc., 747 F.2d 121, 129 (3d Cir. 1984). In order to satisfy this considerable burden the City must make "an affirmative showing of a genuine attempt to ascertain what the law requires." Harris v. District of Columbia, 749 F. Supp. 301, 302 (D.D.C. 1990), citing Dove v. Coupe, 759 F.2d 167, 175-76 (D.D.C. 1985).

Here the City's evidence falls short of satisfying these prerequisites. The declarations proffered by the City state in conclusory fashion that City officials "at all times believed the City's compensation practices complied with the requirements of

the FLSA", or that the City simply intended to pay FLSA mandated overtime.[4] While this evidence cannot be altogether disregarded, it is nonetheless not enough to compel summary adjudication on this issue in the City's favor.

In Masters v. City of Huntington, 800 F. Supp. 355 (S.D. W. Va. 1982), the court found that the City of Huntington's officials did make the requisite "good faith" showing where undisputed testimony demonstrated that City personnel officials met with both the City's attorney and fire chief in order to determine whether the City was in compliance with the requirements of the FLSA. In addition, in assessing the pay structure at issue in Masters, the City sought advice on FLSA compliance from Department of Labor officials, Department of Labor regulations, and municipal organizations to which the City, or its officials, belonged. Id. at 362.

In this case, no similar showing has been made that would entitle the City of Stockton to summary judgment on the

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[4]See Declaration of William Gary Gillis (Fire Chief), ¶ 16; Declaration of Terry Parker (Director of Personnel), ¶ 8; see also Declarations of Dwane Milnes (former City Manager, ¶ 24 and George Bist (employee relations officer), ¶17 ("I am very aware of FLSA overtime requirements, and it was my and the City's intention always to pay FLSA overtime as required by law.").

liquidated damages issue,[5] particularly since the burden of showing good faith rests with the City. On the other hand, conclusive evidence that the City did act in bad faith has also not been demonstrated by Plaintiffs for the same reasons that Plaintiffs cannot prevail for purposes of summary judgment on the extended statute of limitations issue discussed above. The propriety of liquidated damages recovery is "closely related" to the wilfulness germane to determination of the applicable limitations period. Dole v. Elliott Travel & Tours, Inc., 942 F.2d 962, 967 (6th Cir. 1991).

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[5]While the City claims, in the negative, that no Department of Labor official, attorney, or anyone else advised it that fire dispatchers were not being paid in accordance with the FLSA in the context of the labor negotiations at issue, that is not the same as the "affirmative showing" of compliance with FLSA requirements needed in order to make a showing of "good faith" sufficient to avoid liquidated damages. Harris v. District of Columbia, 749 F.2d at 175-76. In addition, information received by Plaintiffs from the Department of Labor in 1999, prior to the 2000 negotiations in question, is also not sufficient to establish "good faith" for purposes of summary judgment. Nor does the City's contention that its supervisors and managers received general FLSA training in 2002, after the negotiations at issue took place, suffice.

CONCLUSION

Based on the foregoing, the motions for summary judgment filed by both Plaintiffs and the City in this matter are denied.[6] Partial summary judgment is also denied, except as to the City's request that the applicable statute of limitations be deemed two years. Summary adjudication is granted to the City on that issue.

IT IS SO ORDERED.

DATED: May 26, 2004

MORRISON C. ENGLAND, Jr.
UNITED STATES DISTRICT JUDGE

[6]The Court notes that extensive evidentiary objections have been made by both sides to evidence posited in support of these motions. Much of the evidence to which those objections are directed was not considered by the Court in ruling on these motions and hence the objections to that evidence need not be considered herein. To the extent evidence was relied upon by the Court as set forth in this Memorandum and Order, the objections filed by both parties are overruled for purposes of these motions.

United States District Court
for the
Eastern District of California
May 27, 2004

* * CERTIFICATE OF SERVICE * *

2:03-cv-00166

Hughes

v.

City of Stockton

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 27, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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AS/MCE

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Jack L. Wagner, Clerk

BY: _____
Deputy Clerk